

## MAC Talking Points on Indigent Defense

### The Issue:

SB 300-301, and HB 4529-4530 establish a Michigan Indigent Defense Commission (MIDC), to be housed within the judicial branch of state government. The MIDC would have the authority to oversee local indigent defense systems and establish minimum service standards statewide. These service levels would be the responsibility of the local governmental unit and the local court together. The bills require local units of government to continue to put in the amount of money they have put in on average over the last three years, but the grants are supposed to pay any new costs incurred going forward. Although the bills authorize the MIDC to provide grants to locals to pay for any new mandates over and above what the local unit is paying today for indigent defense, the potential for funding disputes is virtually unavoidable.

### MAC's Concerns:

Although the bills are much improved over last year, MAC has four areas of concern with the bills and is opposed at this time:

1. The dispute resolution process written to address likely situations where the MIDC does not agree with the proposed plan to implement or budget to pay for the new mandates is slanted in favor of the MIDC to the detriment of the local units responsible for implementing the mandates.
2. Section 15 allows the state to take over indigent defense at the local level and charge back to the county an amount in excess of what their current service level is. This component of the dispute resolution process again is slanted against the locals because it would benefit the state financially to take over the local program and charge back additional funding to the local unit.
3. The third issue has to do with process; and that is establishing a date certain by which the locals submit their plan/budget for the following year, instead of submitting one each time a recommendation comes out. This will achieve certainty and efficiency at both the state and local level.
4. Finally, there is no provision for a local unit of government that can meet the MIDC requirements for less than its local share to pay less than its local share even if the MIDC agrees with the local unit.

### MAC Solutions:

MAC has suggested amendments to rectify these issues, which would move the organization from opposition to the bills to support of the bills. Please contact your state legislators and tell them to adopt the MAC amendments to the introduced versions of HB 4529 and HB 4530, and SB 300 and SB 301.

Our suggested amendments would accomplish the following:

1. Creates a fair dispute resolution process to manage disagreements between parties on the plan/budget submission process through mediation and then the Circuit Court.
2. Creates an appeal process for making sure all parties are fulfilling the requirements of the act through mediation and then the Circuit Court.

3. Replaces punitive Section 15 with a viable process for problem solving through mediation and then the Circuit Court.
4. Creates greater standardization with the annual budget process at both the state and local level through an annual budget/plan submission in order to continue to implement MIDC standards through state grants.
5. Allows the MIDC to approve a local budget to spend less than the local share if it can demonstrate to the MIDC that it can provide the standards for less (and without state grants).

**Support for the amendments:**

There is no recourse for a county to hold the MIDC accountable to its responsibilities, to challenge a final plan/budget, or for the county and the court to settle disputes. MAC has suggested an appeal process to an independent third party (mediation followed by appeal to the circuit court) for both the county budget and plan submission or for disputes that arise between any of the parties.

MAC suggests making the plan/budget submission annual following the first year. Currently, the locals have to submit a budget and plan every time a new standard is approved by the state. MAC's amendment will limit duplication that may arise if the state approves several standards in a given year by going to an annual submission at a date certain. In addition, it allows for a process to continue state funding for earlier standards on a year by year basis, which was intended but overlooked in the bill draft.

Finally, counties have indicated to MAC that if any given year their caseloads fall or they find new efficiencies, they should be able to reduce their indigent defense budget accordingly so long as they can demonstrate the ability to meet the MIDC's service standards. This amendment would allow the MIDC to give approval for a local unit to provide less than its local share if it agrees that the local budget provides for adequate indigent defense according to state standards.

Sec. 5. (1) The Michigan indigent defense commission is created in the judicial branch of state government.

(2) The MIDC shall retain as an autonomous entity all statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other functions, including the functions of budgeting, personnel, locating offices, and other management functions. Any portion of funds appropriated to the MIDC that is not expended in a state fiscal year shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for use in the following state fiscal year.

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards shall be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. The commission shall convene a public hearing before a proposed standard is submitted to the supreme court. A minimum standard proposed under this subsection shall be submitted to the supreme court. ~~The supreme court shall approve or disapprove a proposed minimum standard within 180 days of its submission.~~ A proposed minimum standard shall be final when it is approved by the supreme court. If the supreme court neither approves nor disapproves a proposed minimum standard within 180 days of its submission, then the standard is not approved.

(4) The MIDC shall identify and encourage best practices for delivering the effective assistance of counsel to indigent defendants charged with crimes.

Sec. 13. (1) All indigent criminal defense systems and, at the direction of the supreme court, attorneys engaged in providing indigent criminal defense services shall cooperate and participate with the MIDC in the investigation, audit, and review of their indigent criminal defense services.

(2) A local unit of government may submit to the MIDC an estimate of the cost of developing the plan and cost analysis for implementing the plan under subsection (3) to the MIDC for approval. Upon approval, the MIDC shall award the local unit of government a grant to pay the approved costs for developing the plan and cost analysis under subsection (3).

(3) No later than 180 days after a standard is approved by the supreme court, each indigent criminal defense system shall submit an initial first plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC, and shall thereafter submit an annual plan for the next State fiscal year on or before June 1st of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan shall be those standards that the supreme court has approved not less than 60 days prior to the annual plan submission date. This cost analysis shall include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.

(4) The MIDC may approve or disapprove a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall

consult with the MIDC and submit a new plan, a new cost analysis, or both within 60 calendar days of the new submission. If after 3 attempts a compromise is not reached, the dispute shall be resolved as provided in section 15. ~~the state court administrative office shall appoint a mediator agreed to by the MIDC and the indigent criminal defense system within 30 calendar days to mediate the dispute as provided under subsection (5). Any mediation costs associated with mediation of the dispute shall be paid equally by the parties.~~

~~(5) Mediation of the dispute shall commence within 30 calendar days after the mediator is appointed and finish within 60 calendar days of its commencement. If the parties do not come to a dispute of the dispute, both of the following apply:~~

~~(a) The mediator may submit his or her recommendation of how the dispute should be resolved to the MIDC within 30 calendar days for the MIDC's consideration.~~

~~(b) The MIDC shall consider the recommendation of the mediator, if any, and shall determine the final parameters of the plan or the cost analysis, or both within 30 calendar days, and the indigent criminal defense system shall implement the plan and cost analysis as determined by the MIDC.~~

~~(6) If an indigent criminal defense system fails to comply with the requirements of subsection (5) (b), the MIDC shall proceed under section 15.~~

~~(7)~~ (5) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement the plan for each system approved by the MIDC. The information used to create this report shall be made available to the governor, the senate majority leader, the

speaker of the house of representatives, and the appropriations committees of the senate and house of representatives.

~~(8)~~ (6) An indigent criminal defense system shall maintain not less than its local share, unless the approved standards can be met for less than a system's local share amount. If the MIDC determines that funding in excess of the indigent criminal defense system's share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding shall be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards, which funds shall be provided to indigent criminal defense systems through grants as described in subsection ~~(9)~~ (7).

~~(9)~~ (7) ~~Except as provided in section 15, a~~ An indigent criminal defense system shall not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.

~~(10)~~ (8) This state shall appropriate funds to the MIDC for grants to the local units of government for the reasonable costs associated with data required to be collected under this act that is over and above the local unit of government's data costs for other purposes.

~~(11)~~ (9) Within 180 days after receiving funds from the MIDC under subsection ~~(9)~~ (7) an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel.

~~(12)~~ (10) The MIDC may apply for and obtain grants from any source to carry out the purposes of this act. All funds received

by MIDC, from any source, are state funds and shall be appropriated as provided by law.

~~Sec. 15. (1) If an indigent criminal defense system fails to comply with section 13 within 60 calendar days, the MIDC shall undertake the administration of indigent criminal defense services for the indigent criminal defense system, and in addition to paying its local share, the indigent criminal defense system shall pay the following assessments as the MIDC determines are necessary in order to bring the indigent criminal defense system into compliance with the minimum standards established by the MIDC:~~

- ~~(a) In the first year, 10% of the state's costs.~~
- ~~(b) In the second year, 20% of the state's costs.~~
- ~~(c) In the third year, 30% of the state's costs.~~
- ~~(d) In the fourth year, or any subsequent year, 40% of the state's costs.~~

~~(2) An indigent criminal defense system may resume the administration of indigent criminal defense services at any time upon approval by the MIDC of its plan for the provision of indigent crime defense services and cost analysis. When a system resumes that administration, it is no longer required to pay an assessment under subsection (1) but shall be required to pay no less than its share.~~

Sec. 15. (1) If a dispute arises between the MIDC, local unit of government funding unit, or a trial court as to the requirements under this act, including any disputes as to the approval of an indigent criminal defense system's plan and cost analysis and as to compliance with the requirements in section 13, an attempt shall be made to resolve the matter through mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30 calendar days to mediate the dispute. The state court

administrator, as authorized by the supreme court, shall assist in facilitating the mediation process, and if the parties are unable to agree on the selection of a mediator, the state court administrator, as authorized by the supreme court, shall appoint a mediator. Mediation of the dispute shall commence within 30 calendar days after the mediator is appointed and finish within 60 calendar days of its commencement. Any mediation costs associated with mediation of the dispute shall be paid equally by the parties.

(2) If the dispute is not resolved through mediation, the MIDC, local unit of government funding unit, or a trial court may only bring an action seeking equitable relief in the circuit court as follows:

(a) Except as provided in subdivision (b), within 60 days following the termination of mediation.

(b) For a plan and budget requiring a state grant for implementation, within 60 days after funds are received by the local unit of government funding unit.

(c) The action shall be brought in the judicial circuit where the local unit of government or trial court involved in the dispute is located. The state court administrator, as authorized by the supreme court, shall assign an active or retired judge from a different judicial circuit to hear the case as authorized by the supreme court. Any costs associated with the assignment of the judge shall be paid equally by the parties. If the dispute involves the indigent criminal defense system's plan and cost analysis, the circuit court may approve, reject, or modify the submitted plan, cost analysis, or grant and its terms, determine if section 13 has been complied with, and issue necessary orders to obtain compliance with section 13 of the act, provided, however, the indigent criminal defense



system shall not be required to fund in excess of the amount  
determined in subsections (6) and (7) of section 13.

the first of these is the fact that the  
the second is the fact that the